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 Details: Proposed Audit: Allocation of State Resources for District Attorney Positions

(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

2005-06

(session year)

Joint

(Assembly, Senate or Joint)

Committee on Audit...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
 - (**ab** = Assembly Bill) (**ar** = Assembly Resolution) (**ajr** = Assembly Joint Resolution)
 - (**sb** = Senate Bill) (**sr** = Senate Resolution) (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

Record of Committee Proceedings

Joint Legislative Audit Committee

Proposed Audit: Allocation of State Resources for District Attorney Positions

August 29, 2006

PUBLIC HEARING HELD

Present: (10) Senators Roessler, Cowles, S. Fitzgerald, Miller and Lassa; Representatives Jeskewitz, Kaufert, Kerkman, Travis and Cullen.

Absent: (0) None.

Appearances For

- Tim Baxter, Prairie du Chien — President, Wisconsin District Attorney's Association
- Jeff Greipp, Madison — Association of State Prosecutors
- Jane Foley, Milwaukee — Victim Advocate, Milwaukee County District Attorney Office

Appearances Against

- None.

Appearances for Information Only

- Janice Mueller, Madison — State Auditor, Legislative Audit Bureau
- Kate Wade, Madison — Legislative Audit Bureau
- Philip Werner, Madison — Director, Department of Administration, State Prosecutors Office
- John Zakowski, Green Bay — District Attorney, Brown County
- Lawrence Lasee, Green Bay — Assistant District Attorney, Brown County
- Chris Liegel, Milwaukee — Milwaukee County District Attorney Office

Registrations For

- Dale Schultz, Richland Center — State Senator, State Senate, 17th Senate District
- Sheryl Albers, Reedsburg — State Representative, State Assembly, 50th Assembly District

Registrations Against

- None.

August 29, 2006

EXECUTIVE SESSION HELD

Present: (10) Senators Roessler, Cowles, S. Fitzgerald,
Miller and Lassa; Representatives Jeskewitz,
Kaufert, Kerkman, Travis and Cullen.

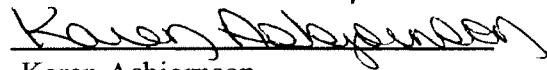
Absent: (0) None.

Moved by Representative Jeskewitz, seconded by Senator Cowles
that **Proposed Audit: Allocation of State Resources for District
Attorney Positions** be approved according to the scope statement
dated August 23, 2006 prepared by the Legislative Audit Bureau.

Ayes: (10) Senators Roessler, Cowles, S. Fitzgerald,
Miller and Lassa; Representatives Jeskewitz,
Kaufert, Kerkman, Travis and Cullen.

Noes: (0) None.

ADOPTION RECOMMENDED, Ayes 10, Noes 0


Karen Asbjornson
Committee Clerk

Vote Record

Joint Legislative Audit Committee

Date: 8-29-06
Bill Number: Proposed Audit of DA's
Moved by: Jeskewitz Seconded by: Cowles
Motion: _____

<u>Committee Member</u>	<u>Aye</u>	<u>No</u>	<u>Absent</u>	<u>Not Voting</u>
Senator Carol Roessler, Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Suzanne Jeskewitz, Co-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Robert Cowles	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Scott Fitzgerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Mark Miller	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Julie Lassa	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Dean Kaufert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative Samantha Kerkman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative David Travis	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Representative David Cullen	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

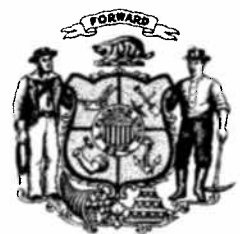
Totals: 10 0 _____

☒ Motion Carried

☐ Motion Failed



WISCONSIN STATE LEGISLATURE



From: Southworth, Scott [mailto:Southworth.Scott@mail.da.state.wi.us]

Sent: Friday, July 21, 2006 11:20 AM

To: Waldrop, Joyce

Cc: Gundrum, Mark; Horne, Scott

Subject: RE: DA Weighted Caseload Study

Joyce,

Thank you for forwarding the caseload study and for your thoughts on how we can demonstrate the need for an additional .5 prosecutorial position in Juneau County.

The issue is not pro se filings of incarcerated individuals, it's criminal prosecutions. When we file a felony substantial battery or battery by prisoner case, for example, we get credit for that felony charge(s). For a non-incarcerated individual, we can resolve a felony matter in a timely (standard) manner. However, when a prisoner (or patient in the case of Sand Ridge) engages in criminal behavior (e.g. the prison riot at New Lisbon), it takes FAR longer to resolve the cases because they file so many motions, demand jury trials, fire their attorneys (3 of the 6 prisoners from New Lisbon are on their 2nd defense attorney) and have many hearings. As a result of the prison riot at New Lisbon, I filed charges against 6 defendants in June 2005. Not one has settled, 5 of the 6 are currently going to jury trial in the upcoming months, and all but 1 will take approximately 3 days each. I suspect the 6th defendant to demand a jury trial in the next few weeks. That means I am looking at 3 weeks of my time just in jury trial dates, and that doesn't include pre-trial motion hearings. It is time I do not have, given our caseload.

To put this in a different way, the current system reflects caseload, but does not take into account the type of defendant. There is a big difference between a defendant who is incarcerated in the Wisconsin State Prison System and a defendant who is not. A prisoner who will be incarcerated for years to come will litigate a case to the fullest extent, and that is not normal for most cases. They do so likely for reasons that make no legal sense - a court hearing means a day out of prison and a chance to take a drive and see the world in the backseat of a squad car, for example. A jury trial is a chance to wear civilian clothes for a few days instead of a jumpsuit.

What I would note in the analysis is that Milwaukee County prosecutors operate at 88.8% workload, while we here in Juneau County operate at 123.6% workload. They have over 13 EXTRA positions, and we currently need a .5 position to get down to 100%, even if we assume that our prison cases are not unique. In reality, we probably need an additional 1.0 FTE position to really get to 100% workload, but all I am asking for is an extra .5 FTE to make our current .5 FTE a 1.0. If Sand Ridge expands and gets more patients, as they want to do, we will likely see even more complaints from that facility. Note that I'm not advocating cutting any positions from Milwaukee - I just point out the numbers to bring context to our situation.

I'm not certain that we can come to any objective number that will justify the .5 position increase here. It's just a common-sense argument that I believe legislators will

understand if they consider the difference between a guy on the street and an incarcerated prisoner charged with the same type of crime.

One suggestion would be to create a .5 position that specifically deals with patients and incarcerated individuals. We have special prosecutorial positions for domestic abuse, and I realize those are funded normally through federal grants, but a special position to deal with incarcerated individuals with state funding would be one solution for us here in Juneau County.

I would appreciate any thoughts on this - I will also cc: Mark Gundrum, who is chairing the committee on DA funding and DA Scott Horne from LaCrosse County, who has dealt with these issues extensively.

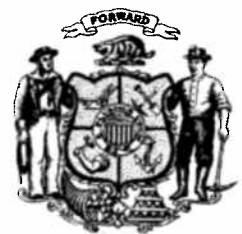
Thanks again, Joyce.

Scott

Scott Harold Southworth
District Attorney
Juneau County



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN

Legislative Audit Bureau

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Madison, Wisconsin 53703
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Leg.Audit.Info@legis.state.wi.us

Janice Mueller
State Auditor

August 10, 2006

Senator Dale Schultz
211 South, State Capitol
Madison, Wisconsin 53702

Representative Sheryl Albers
3 North, State Capitol
Madison, Wisconsin 53702

Dear Senator Schultz and Representative Albers:

Thank you for your letter requesting an audit that quantifies the number of pro se filings by inmates housed in the state's correctional facilities and the associated workload in district attorney offices in the counties where these inmates reside. As you know, we reviewed the weighted caseload formula used to allocate funding for district attorney positions in report 95-24.

Unfortunately, given our current workload, I cannot initiate an audit of this size and scope without the approval of the Joint Legislative Audit Committee. I have forwarded a copy of your request to the co-chairpersons of the Committee for their consideration. I will also seek ways to assist the members of the Joint Legislative Council's Special Committee on District Attorney Funding and Administration as they review state funding options for district attorneys and their staffs.

Please contact me if you have any questions.

Sincerely,

Janice Mueller
State Auditor

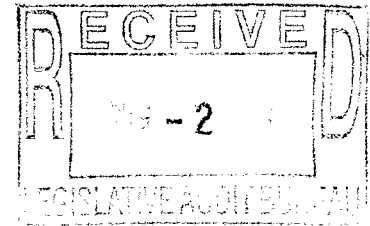
JM/JC/bm

Enclosures

cc: Senator Carol A. Roessler
Representative Suzanne Jeskewitz

Wisconsin Legislature

P.O. Box 7882 - Madison, WI 53707



July 31, 2006

Janice Mueller
Audit Bureau
Inter-departmental mail

Dear Ms. Mueller,

For the 2007-09 budget, we plan to propose a modification to the District Attorney weighted caseload formula and request you help with a letter audit by LAB. We contacted Paul Onsager to learn how the current formula works.

We need to determine the amount of additional DA workload that results from the pro se filings by incarcerated persons in the counties that host state prisons, correctional facilities and facilities for sexual predators.

We request a letter audit that obtains information from counties that host state facilities that incarcerate people. The universe would include state correctional facilities/prisons and state sexual predator facilities that have opened after December 31, 1997.

The letter audit would obtain information from the host counties that enables a comparison of the DA workload in the year leading up to the opening of a state facility and the workload in the first 12 months of the facility's operation. Information would include number of pro se filings by persons incarcerated and the amount of time required to respond to these types of filings.

Many filings initiated by incarcerated persons, by their nature, consume much more DA time than other filings. Please see the enclosed comments by Scott Southworth, DA for Juneau County for a good explanation of the difference. Juneau County is host to New Lisbon State Correctional Facility and Sand Ridge sexual predator facility.

We agree with Southworth that because of the significant response time required by such filings, the existing caseload weighting formula needs modification.

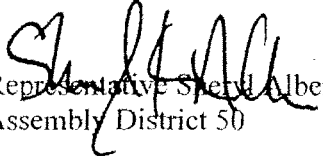
As you know, the last revision to the formula was in 1995. The 1995 audit did not delve into pro se filings. Since 1995, Wisconsin has eliminated its out-of-state prisoner population. This fact creates circumstances quite different from 1995.

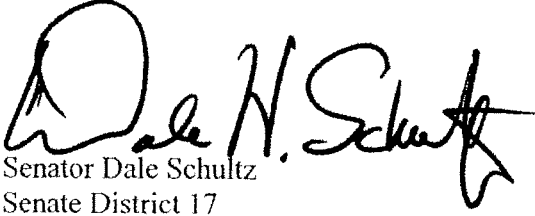
For a letter audit, we recommend you work with the District Attorneys Association, Assistant District Attorneys Association, and Director of State Courts, to obtain data

related to the weighted caseload formula. Please contact either of us with questions about this request.

We look forward to hearing from you.

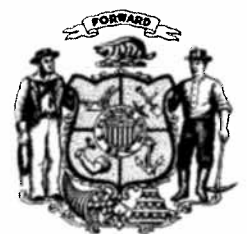
With kindest regards,


Representative Sheri Albers
Assembly District 50


Senator Dale Schultz
Senate District 17



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN

Legislative Audit Bureau

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Janice Mueller
State Auditor

DATE: August 23, 2006

TO: Senator Carol A. Roessler and
Representative Suzanne Jeskewitz, Co-chairpersons
Joint Legislative Audit Committee

FROM: Janice Mueller *Janice Mueller*
State Auditor

SUBJECT: Proposed Audit of the Allocation of District Attorney Positions—Background
Information

At your request, we have gathered some background information the Joint Legislative Audit Committee may find useful in considering a request for an audit of the allocation of district attorney positions. Responsibility for funding county-level prosecutorial staff, including district attorneys, deputy district attorneys, and assistant district attorneys was transferred to the State by 1989 Wisconsin Act 31.

Although the State Prosecutors Office in the Department of Administration oversees the allocation of these funds, the 71 district attorneys in Wisconsin are elected at the county level; Shawano and Menominee counties jointly elect a district attorney. In fiscal year 2006-07, \$38.4 million in general purpose revenue and \$1.8 million in program revenue support 427.65 full-time equivalent authorized positions. While the State pays salaries and fringe benefits of county prosecutors, counties pay the remaining costs, including the salary and fringe benefits of support staff.

In 1995, we conducted an evaluation of the methodology used to allocate district attorney positions and made a number of recommendations to improve the accuracy of the caseload measure used to allocate these positions. Although changes to the allocation methodology were made at that time, the distribution of district attorney positions has not been adjusted since then, even though the Legislative Fiscal Bureau regularly reports the difference between the number of authorized positions and the number that should be authorized based on the caseload measure.

A Legislative Council study committee—the Special Committee on District Attorney Funding and Administration—has recently been formed to review state funding for district attorneys, deputy district attorneys, and assistant district attorneys in order to determine if other funding sources exist to support those positions. The Committee is further charged with reviewing state administrative functions to determine if any changes should be made in the administrative structure relating to those functions.

Concerns have also been expressed about the method by which the current formula allocates resources to counties in which state correctional facilities are located. Some court proceedings

involving individuals sentenced to state correctional facilities are the responsibility of the county district attorney. Some believe that such cases require more prosecutorial staff time than other types of proceedings, but inmate court proceedings are not specifically identified as such in the caseload formula.

An audit of the allocation of district attorney positions could:

- review the process for allocating state-funded positions, including specialized prosecutorial staff;
- review the current system for developing workload indicators and staffing comparisons;
- examine changes in prosecutorial caseload characteristics relative to changes in state correctional facility inmate populations;
- review data on average prosecutorial hours for different types of cases in order to determine whether prosecutors devote a larger than average number of hours to cases involving inmates; and
- identify other potential concerns with the caseload formula through analysis of available data and discussions with county prosecutors.

If you have any additional questions regarding this request, please contact me.

JM/KW/bm

cc: Senator Robert Cowles
Senator Scott Fitzgerald
Senator Mark Miller
Senator Julie Lassa

Representative Samantha Kerkman
Representative Dean Kaufert
Representative David Travis
Representative David Cullen

Senator Dale Schultz

Representative Sheryl Albers

Stephen E. Bablitch, Secretary
Department of Administration

Philip Werner
State Prosecutors Office
Department of Administration

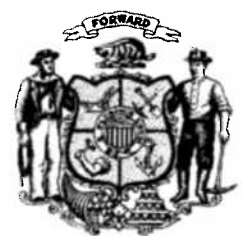
Timothy C. Baxter, President
Wisconsin District Attorneys Association

Catharine White, President
Wisconsin Assistant District Attorneys Association

A. John Voelker
Director of State Courts



WISCONSIN STATE LEGISLATURE





OFFICE OF DISTRICT ATTORNEY

Milwaukee County

E. MICHAEL McCANN • District Attorney

August 28, 2006

Sen. Carol A. Roessler
Room 8, South
State Capitol
P.O. Box 7882
Madison, WI 53707-7882

Rep. Suzanne Jeskewitz
Room 314, North
State Capitol
P.O. Box 8952
Madison, WI 53708-8952

RE: Joint Committee on Audit, Public Hearing on the Proposed Audit of Allocation
of State Resources for District Attorney Positions

Dear Co-Chairpersons Sen. Roessler and Rep. Jeskewitz:

Kindly accept this correspondence as my remarks on behalf of the Milwaukee County District Attorneys Office.

There are 71 prosecutor offices throughout the State of Wisconsin. Milwaukee County has the largest office with 123 full-time equivalent (FTE) positions; Florence County's 0.5 FTE position makes it the smallest office. Obviously, there are inherent difficulties in evaluating "statewide" needs considering the diversity of our jurisdictions. Certainly, there are factors justifying a distinct analysis for district attorney offices staffed by one person. For example, there exists a "paralyzing" impact on a small office when a single serious or very complex case is presented. However, managing the largest district attorney's office in the State also has its special challenges.

There are three unique aspects of our office that I would like to bring to the attention of the Committee. First, in a large office, there is a critical need for intermediate supervisory positions. It is not realistic for individuals in supervisory positions to be expected to carry a full caseload. At the present time, we have attorneys who supervise over 30 other attorneys in the office. Supervisory responsibilities should be taken into consideration when measuring workload.

Secondly, Milwaukee County has been very aggressive in seeking federal funding for prosecutor positions. Over the past 20 years, this has saved the State of Wisconsin tens of millions of dollars. Presently, 38 of our positions are federally funded. However, several of these positions do not labor on the measured workload but their positions are counted to evaluate prosecutorial need in Milwaukee County. Some of these grant opportunities are unique to a large urban area. In Milwaukee County, there are prosecutors who are assigned to district police stations that do not regularly appear in

Robert D. Donohoo
Jon N. Reddin
Patrick J. Kenney
Lovell Johnson, Jr.
James J. Martin
Thomas A. Schulz
Alexander G. Skienarz
William J. Molitor
Donald S. Jackson
Gale G. Shetton
Terry Magowan
Gary D. Mahkorn
David Robles

Peg Tarrant
Douglas J. Simpson
Cynthia G. Brown
Norman A. Gahn
Stephanie Gienis Rothstein
Carol E. Janick
Steven H. Glamm
Mary Anne Smith
Mark S. Williams
Linda Johnson
John M. Stober
Thomas L. Potter
David Fess
Rayann Chandler Szychinski
Carole Manchester
Kenneth R. Berg
Warren D. Zier
Timothy J. Cotter
Carol Berry Crowley
Steven V. Lucala
Brad Vorpahl
Jane Carroll
Paul Tiffin
Miriam S. Falk
Phyllis M. DeCarvalho
Dennis P. Murphy
Christine M. Kraus
Philip A. Aneff
Thomas J. McAdams
Bruce J. Landgraf
Denis J. Stigl
David M. Lerman
Janet C. Protasiewicz
DeAnn L. Heard
Patricia A. McGowan
Irene E. Parthum
Karen A. Loebel
Nancy Ettenheim
Ronald S. Dague
Lori S. Kornblum
Karne O'Byrne
Maria Dorsey
James W. Frisch
Kurt B. Benkley
James C. Griffin
William P. Papp
Audrey Skwierawski
Joanne L. Hardtke
John T. Chisholm
Christopher A. Liegel
Megan P. Carmody
Laura A. Crivello
Shawn Pompe
Kevin R. Shomin
Jonnilar Marlock
Beth D. Ziegler
Kuren A. Vespalec
Rebecca F. Dallet
Mark A. Sanders
Paul C. Dedinsky
David T. Malone
Kelly L. Hedge
Jeffrey J. Altenburg
Rachael Stencel
Patti Waltsch
Karl L. Lovorn
Bruce W. Becker
Michael T. Mahoney
Mary M. Sowinski
Kathryn K. Samor
Jeanette Corbett
Jeffrey P. Gropp
David Maas
Jeremy L. Resar
Daniel J. Gabler
Sara P. Scullen
T. Christopher Deo
Katharine Kucharski
Lisa P. Ficker
Tiffany J. Harris
Daniel R. Humble
Jacob D. Corr
Joy Hammond
Trevor A. Sisk
Andrew J. Maier
Heidi E. Galvan
Nancy A. Noet
Elisabeth Mueller
Megan J. Thomas
Grant I. Huebner
Stephan Eduard Notten
Christine M. Quinn
Michelle Ackerman Havas
Adam J. Levin
Jennifer K. Rhodes
Claire Starling
Zach Whitney
Rebecca A. Kiefer
Matthew J. Torbenson
Katryna L. Childs
Jason M. Kieckhefer
Carah Helwig
Gilbert Urler
Jenna Merten
Anthony White
Antoni Apollis
Julia Driscoll
Nicole Dondinger
Erin Karshen
Lucy Krontfort
William Anthony Bell, Jr.
Erin Dineen
Maureen A. Brackett
Monica J. Awe
Michael J. Lonski
Paul M. Hauer

court, but work with police departments contributing to community safety in a variety of important ways. Additionally, our office has several prosecutors who are currently assigned to the U.S. Attorney's Office. This is a program that has been in existence for many years. Many of the cases handled by state prosecutors in federal court would otherwise be prosecuted in state court. This program contributes to significant savings in our state prison system as criminals who would otherwise be sentenced to state prison go to federal lockups. This program has other positive budget implications such as a savings in state court resources and within the State Public Defender's Office.

An analysis of the system that exists in Milwaukee County requires that there be some continuing incentive for our office to aggressively pursue federal funds. At the present time, it is a disincentive as many of the created positions count as resources but do not contribute to managing our regular prosecutorial responsibilities. I would strongly urge the Legislative Audit Bureau to acknowledge in this process the need to exclude certain federally funded positions in determining the relative workload of an office.

Finally, all county criminal court systems have unique aspects that contribute to quality and efficiency. Milwaukee County has one of the few court systems in the state where the Judiciary appoints an attorney for every parent involved in Children in Need of Protection and Services (CHIPS) cases. In most counties, parents are not appointed attorneys. Although rights of parents are vigorously defended, the adversarial nature of the system in Milwaukee County greatly contributes to the time it takes to process a CHIPS case. Whatever the circumstances, unique aspects of a system should be part of any thorough evaluation.

As public officials, we share an awesome responsibility to create and manage a court system that is just and fair. As prosecutors, we deal on a daily basis with people who are called upon to voluntarily cooperate with the system. This cooperation comes from witnesses and victims of crime and it often involves great inconvenience, emotional upheaval and fear of retribution. It is the confidence placed in the system by the average citizen that is the primary resource of prosecutors across the state. Thank you for your consideration of these remarks.

Sincerely yours,



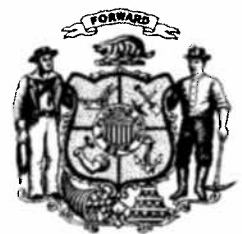
E. Michael McCann
District Attorney, Milwaukee County

PJK:EMM/lh

Cc: Phil Werner, Director
State Prosecutors Office



WISCONSIN STATE LEGISLATURE





WISCONSIN LEGISLATURE

P.O. Box 7882 • Madison, WI 53707-7882

TO: Senator Carol Roessler, Co-Chair
Representative Jeskewitz, Co-Chair
Members of the Joint Committee on Audit

FROM: Representative Sheryl Albers
Senator Dale Schultz

RE: Allocation of State Resources for District Attorney Positions

DATE: August 29, 2006

Thank you Chairs Roessler and Jeskewitz for your prompt consideration of our request for information on the workload for District Attorney offices related to adjudication of court actions involving incarcerated individuals. We appreciate the opportunity to testify in writing and regret we are unable to appear before you in person.

In a recent letter to Janice Mueller, we indicated our desire to adjust the formula that allocates district attorney staff allocations through a 2007-09 Biennial Budget provision. To our knowledge, since 1995, the legislature has not visited this issue.

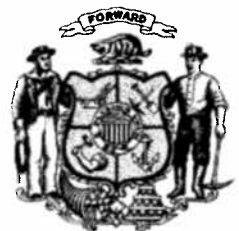
The current formula considers caseloads but does not take into account the unusual circumstances for counties that host state prisons, correctional facilities and facilities for sexual predators. Many incarcerated defendants do not have an attorney and represent themselves. Evidence presented to us suggests that the number of filings in those counties by unrepresented defendants is greater than in other counties. When prisoners are unrepresented defendants there is additional motion work, and disproportionate amounts of time consumed.

This audit, together with the Legislative Council's Special committee on District Attorney Funding and Administration, will provide the legislature with information useful in determining whether state funding for the State Prosecutors Office in the Department of Administration is distributed.

We are confident that this audit will identify the factors most important to a fair and impartial allocation of funds to the counties to be used in the upcoming budget cycle. Again, we appreciate the Committee's willingness to promptly consider this issue and we respectfully urge members to approve our request.



WISCONSIN STATE LEGISLATURE



JOINT LEGISLATIVE AUDIT COMMITTEE

PUBLIC HEARING TO CONSIDER A PROPOSED AUDIT OF THE ALLOCATION OF STATE RESOURCES FOR DISTRICT ATTORNEY POSITIONS – 8/29/06

Testimony of
Philip W. Werner, Director
State Prosecutors Office

Co-Chairs Senator Roessler and Representative Jeskewitz, and members of the Joint Legislative Audit Committee, thank you for the opportunity to appear before you today.

My name is Phil Werner, and I am the Director of the State Prosecutors Office. The State Prosecutors Office is responsible for overall administration of the District Attorney program, including:

- budget development and management
- fiscal and program administration
- policy development, and
- collective bargaining.

In State Auditor Janice Mueller's memo to the Co-Chairs, dated 8/23/06, a number of points were raised that could be the basis of an audit. I will comment on those, and will be happy to respond to questions.

- (1) *"Review the process for allocating state-funded positions, including specialized prosecutorial staff."*

When the District Attorney program was established, the DAs, Deputy DAs, and Assistant DAs became state employees and the Governor and the Legislature retained the authority to allocate positions. This allocation or re-allocation can be done only via the budget process, separate legislation, or through an action of the Joint Finance Committee via s.16.505, or s.13.10, Wis. Stats.

In Secretary Mueller's memo, I am uncertain if the reference to "specialized prosecutorial staff" pertains to ADAs in grant-funded positions or to special prosecutors appointed by judges. In the case of grant-funded positions, the same sort of legislative oversight is required. The funds available for special prosecutors is authorized in the biennial budget process.

- (2) *"Review the current system for developing workload indicators and staffing comparisons."*

The caseload analysis methodology in use today is driven primarily by recommendations of the LAB study conducted in 1995. The methodology also incorporates an LAB recommendation to seek input from a panel of prosecutorial experts for further refinement.

- (3) *"Examine changes in prosecutorial caseload characteristics relative to changes in state correctional facility inmate populations."*

In order to analyze the effect of inmate populations on a prosecutorial unit's caseload, the State Prosecutors Office would need additional data. The State Prosecutors Office does not currently have access to correctional inmate caseload data. This may need to be a combination of data provided by the Courts, DA Offices, and DOC.

- (4) *"Review data on average prosecutorial hours for different types of cases in order to determine whether prosecutors devote a larger than average number of hours to cases involving inmates."*

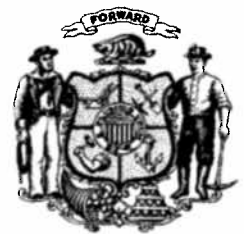
Again, as in my response to the previous question, additional data would need to be made available to the State Prosecutors Office. Currently, it is not known if inmate cases require more time to prosecute than non-inmate related cases.

- (5) *"Identify other potential concerns with the caseload formula through analysis of available data and discussions with county prosecutors."*

In addition to LAB discussions with county prosecutors, I will be happy to work with the LAB regarding any issues involved in an audit.



WISCONSIN STATE LEGISLATURE





STATE OF WISCONSIN

Legislative Audit Bureau

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Janice Mueller
State Auditor

August 31, 2006

Representative Sheryl Albers
15 North, State Capitol
Madison, Wisconsin 53702

Dear Representative Albers:

Thank you for the enclosed letter, which suggests ways in which the scope for the proposed audit of the allocation of district attorney positions might be expanded.

At its public hearing on August 29, 2006, the Joint Legislative Audit Committee voted unanimously to advance the audit as outlined in the proposed audit scope memorandum dated August 23, 2006. In my testimony, I indicated that we would work diligently to complete the audit in time for the Legislature's consideration of the biennial budget in Spring 2007. We will also take steps to address your concerns as we begin our fieldwork.

Should you have any further questions, please contact me.

Sincerely,

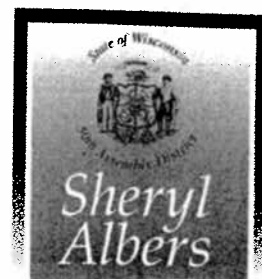
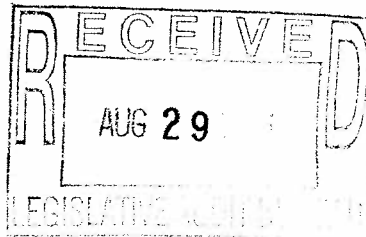
Janice Mueller
State Auditor

JM/JC/bm

Enclosures

cc: ✓ Senator Carol A. Roessler, Co-chairperson
Joint Legislative Audit Committee

Representative Suzanne Jeskewitz, Co-chairperson
Joint Legislative Audit Committee



August 25, 2006

Janice Mueller
State Auditor
Legislative Audit Bureau
Inter Departmental

Subject: Proposed Audit of the Allocation of District Attorney Positions—Background

Dear Ms. Mueller,

Thank you so much for your attention to this very important issue. I greatly appreciate your background information on the topic.

I have two additional concerns that I would like to see addressed in your audit which are not mentioned:

- 1) Warden Lundquist in New Lisbon indicates to me that the Attorney General is supposed to handle some issues and I am not sure what is supposed to be covered under that umbrella, and whether the Attorney General is in fact stepping in to handle some cases. Whether or not the Attorney General is stepping in would impact the district attorney case load, and
- 2) Recent statistics show that both adult and juvenile crime is generally down. Some measure for DA case load should reflect a comparison with case loads in the past for distribution purposes.

Thank you for your time and attention.

Sincerely yours,

Sheryl K. Albers
State Representative

cc. James Barrett
Juneau County Board Chair

Scott Harold Southworth
Juneau County District Attorney

faxed to
8/21/06

ASSOCIATION OF STATE PROSECUTORS

AUG 31 2006

FOR RELEASE: August 30, 2006

MORE INFORMATION: Jeffrey Greipp (414) 467-5050

Audit Committee told prosecutors lack resources

MADISON – Everything from high workloads generated by “jailhouse attorneys” to the numerous hours needed to pursue sensitive crimes, to high turnover due to frozen salaries has added to the strain on district attorney offices around the state, according to testimony heard on Tuesday.

The Joint Legislative Audit Committee held a public hearing on Tuesday, August 29, to review the allocation of assistant district attorney positions throughout Wisconsin. The Committee voted unanimously to commission an audit to advise the Legislature on how to revise the formulas for determining caseloads for district attorney offices and investigate the need for more positions.

"I applaud the committee's effort to address the caseload formula. We prosecute a number of incarcerated individuals from the local prison and sexual predator facility. Their cases require much more prosecutorial time because they file numerous pro se motions, switch defense attorneys, refuse reasonable settlement agreements, and undoubtedly view court hearings as a way of getting out of prison for a day to ride in a patrol car. The current formula does not account for those factors," said Scott Harold Southworth, the District Attorney for Juneau County.

The Legislative Audit Bureau last evaluated the methodology used to allocate assistant district attorney positions in 1995, and at that time it made a number of recommendations to improve the accuracy of the caseload measure used to allocate these positions. Although changes to the allocation methodology were made at that time, it has not been adjusted since then. The Committee heard from prosecutors around the State that offices are under-funded and the current system does not adequately calculate the growing workloads. Prosecutors and victims advocates described the resources needed to pursue sexual assault cases and the current shortfall in those resources.

"We are hitting a crisis point in the criminal justice system. We not only have severe staffing problems in terms of the number of prosecutors, we have systemic problems due to the high turnover caused by salaries that have stagnated for the past several years," said Jeff Greipp, an assistant district attorney for Milwaukee County. Greipp said he is pleased that the committee – chaired by Senator Carol Roessler and Representative Suzanne Jeskewitz – will study the issue.

After hearing many prosecutors' complaints about the lack of resources available, the Legislature has stepped up efforts to find a solution to these problems. In addition to the action begun Tuesday by the Joint Legislative Audit Committee, a Legislative Council study committee has recently been formed at the request of the Association of State Prosecutors and the Wisconsin District Attorneys' Association. The Special Committee on District Attorney Funding and Administration will review state funding for district and assistant district attorneys in order to determine funding sources to support these positions.

Both the Joint Legislative Audit Committee and the Special Committee on District Attorney Funding and Administration will continue examining these issues this fall and make recommendations prior to the next state budget, which will likely be introduced in February 2007.